IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Mahaveer Prasad & Anr. Versus State of Rajastn & Anr.

S.B. Criminal Misc. Petition No. 382/2006
against the order dated 9-3-2006 passed
by the Judicial Magistrate, Nawa City, district
Nagaur, in F.R. No. 42/2005 (50/2006) arising
out of FIR No. 104/2005, Police Station, Nawa
City, district Nagaur.

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Date of Order: September 20, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. G.R. Punia, for the petitioners.
Mr. O.P. Rathi, Public Prosecutor for the State.
Mr. M.C. Bhoot, for the non-petitioner No.2.

BY THE COURT:

This criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 9-3-2006 passed by the Judicial Magistrate, Nawa City, district Nagaur (for short, "the trial Court" hereinafter), whereby the trial Court took cognizance of the offences under Section 498-A and 406 IPC against the petitioners.

I have heard learned counsel for the parties. Carefully gone through the order impugned passed by the trial Court as also the record of the trial Court.

It is contended by the learned counsel for the petitioners that on an FIR, being FIR No. 104/2005, lodged by the complainant/non-petitioner No.2 with the Police Station, Nawa City, district Nagaur, the police investigated the matter and filed negative Final Report being F.R. No. 42/2005 (50/2006). However, on a notice to the complainant/non-petitioner No.2, she filed a protest petition. After recording the statements of the complainant/non-petitioner No.2 and her witnesses under Sections 200 and 202 of the Code, the trial Court took cognizance of the offences noticed above, issued process against the petitioners and declined to accept the negative final report without considering the FR papers as also without assigning any reason for not agreeing with the conclusion arrived at by the investigating officer. Learned counsel has relied on two decisions of the Hon'ble Supreme Court in Sampat Singh & ors. Vs. State of Haryana & ors., (1993) 1 SCC 561; and Suresh Vs. Mahadevappa Shivappa Danannava & Anr., 2005 Cr.L.R. (SC) 295.

Learned Public Prosecutor and the counsel for the complainant/non-petitioner No.2 have supported the impugned order and contended that the trial Court was justified in taking

cognizance of the offences on the basis of the material placed before it by the investigating officer and from the statements recorded by the police as also the statements of the complainant and her witnesses recorded by the trial Court under Sections 200 and 202 of the Code. Learned counsel for the complainant/non-petitioner No.2 has relied on the decisions of the Hon'ble Supreme Court in Jagdish Ram Vs. State of Rajasthan, AIR 2004 SC 1734; Deputy Chief Controller of Imports & Exports Vs. Roshan Lal Agarwal & ors., (2003) 4 SCC 139; and U.P. Pollution Control Board Vs. Mohan Meakings Ltd, & ors., (2000) 3 SCC 745.

I have given my thoughtful consideration to the rival submissions made by the learned counsel for the parties.

Complainant/non-petitioner No.2 lodged the FIR on 4.8.2005 being FIR No. 104/2005, Police Station, Nawa City, for the offences under Sections 498-A and 406 IPC read with Section 4 of the Dowry Prohibition Act. The police recorded the statements of the complainant/non-petitioner No.2, i.e. the first informant, under Section 161 of the Code, as also the statements of her mother and other witnesses. The police submitted the negative Final Report No. 42/2005 (50/2006) only on the ground that except the complainant/non-petitioner No.2 and her relatives in parental side supporting the case of the first informant, the other witnesses have stated that they have not

seen petitioners harassing the complainant. One of the grounds, on the basis of which negative Final Report was filed is that the complainant/non-petitioner No.2, the first information, is an imbecile and, therefore, the allegations levelled by her against the petitioners are not established. On a notice of the negative final report to the complainant/non-petitioner No.2, she filed a protest petition before the trial Court reiterating the allegations made in the FIR and requested the trial Court to record her statement as also the statements of her witnesses under Sections 200 and 202 of the Code and proceed against the petitioners. The trial Court recorded the statements of the complainant/non-petitioner No.2 under Section 200 of the Code and the statements of two witnesses produced by her, namely Smt. Gyan Prabhaand Ramesh Chandra under Section 202 of the Code. In the statement before the trial Court on oath, the witnesses stated that the investigating officer was in collusion with the petitioners and filing of the negative final report is erroneous, whereas from the statements of the witnesses, prima facie there is a ground to proceed against the petitioners for the offences noticed above.

On careful perusal of the statements of the complainant/non-petitioner No.2 recorded under Section 161 of the Code, as also the statements of the complainant/non-petitioner No.2 and her witnesses recorded under Sections 200

and 202 of the Code, in my view, there is sufficient material and cogent ground to proceed against the present petitioners for the offences noticed above. The complainant/non-petitioner No.2, the first informant, and two other witnesses produced by her, stated that the marriage of the complainant was solemnized with Praveen Kumar, who is the son of the present petitioners about 2 ½ years ago from the date of recording their statements, i.e. on 5.8.2005. For five months, she was well-treated but thereafter she was subjected to harassment and cruelty in connection with illegal demand of dowry, whereas, the witnesses stated that at the time of marriage, reasonable dowry articles were given. On reading the statements of the witnesses under Section 161 of the Code, as also the statements recorded by the trial Court on oath under Sections 200 and 202 of the Code, in my view, there is prima facie evidence of consistent demand of dowry and in connection with demand of dowry, the first informant, i.e. the complainant/non-petitioner No.2 was subjected to cruelty and harassment so much so that according to the complainant, she was harassed to the extent that her mental equilibrium was disturbed and she was declared to be a mental case and was taken to the Psychiatrist. In her statement under Section 200 of the Code, as also in the statements of her two witnesses, viz. Gyan Prabha and Ramesh Chandra under Section 202 of the Code, they have stated that the non-

petitioner No.2 was subjected to cruelty and harassment in connection with demand of dowry and a motorcycle as also a house at Deedwana costing about Rs. 3 lac to Rs.4 lac, which her parents could not fulfill.

In their statements, some of the other witnesses recorded by the police, they only stated that they had never heard of any quarrel or demand of dowry. It is not necessary that the persons who have no concern with the family, would know as to what has been happening between the family members. It is not necessary that every person of the village would know the events taking place within the four-corners of a house between the members of the family. The negative final report is mainly based on the statements of those witnesses. The trial Court, on consideration of the negative final report filed by the police, as also the statements of the complainant and her witnesses recorded under Sections 200 and 202 of the Code, by an elaborate and well-reasoned order, came to the conclusion that there is ground to proceed against the petitioners for the offences under Sections 498-A and 406 IPC and accordingly took the cognizance of the the offences and issued the process. On careful perusal of the order impugned, it cannot be said that the trial Court has not considered the statements of the witnesses recorded by the police under Section 161 of the Code. On examining the case in its totality, the trial Court came to the

conclusion that on the perusal of the statements of the witnesses available on record, prima facie there is evidence to the effect that the petitioners have harassed and subjected the complainant/non-petitioner No.2 to the cruelty in connection with demand of dowry and, therefore, there is sufficient ground to proceed against the petitioners and to take cognizance of the offences and, therefore, did not think it proper to accept the negative final report submitted by the police and accordingly rejected the negative final report and took the cognizance of the offences noticed above.

In Sampat Singh & ors. Vs. State of Haryana & ors. (supra), the Hon'ble Supreme Court held that it is not for a court to keep track of an investigation and watch its day to day progress but, when an investigation culminates into a final report as contemplated under Section 173 of the Code then the competent court enjoins a duty within its authority sanctioned by law to scrupulously scrutinise the final report and the accompaniments by applying its judicial mind and take a decision either to accept or reject the final report.

In Suresh Vs. Mahadevappa Shivappa Danannava & Anr. (supra), the Hon'ble Supreme Court observed as under:-

> "A perusal of the complaint would only reveal that the allegations as contained in the complaint are of civil nature and do not prima facie disclose commission of alleged criminal offence under Section 420 IPC. The Magistrate, in our opinion, has not

> considered the report filed by the police under Section 156 (3) Cr.P.C. judicially. Irrespective of the opinion of the police, the Magistrate may or may not take cognizance under Section 190 (1) of Cr.P.C. In the instant case, as could be seen from the records, that the police has given a clean chit to accused Nos. 2-4. In our opinion, the Magistrate ought not to have taken cognizance of the alleged offence against the accused No.1, the appellant herein and that the complaint has been made to harass the accused No.1 to come to terms by resorting to criminal process."

In Jagdish Ram Vs. State of Rajasthan, AIR 2004 SC 1734, the Hon'ble Surpreme Court held that at the stage of taking cognizance, the Magistrate has only to decide whether sufficient ground exists or not for further proceeding in the matter. It is well settled that notwithstanding the opinion of the police, a Magistrate is empowered to take cognizance if the material on record makes out a case for the said purpose. The Apex Court further held that investigation is the exclusive domain of the police. The taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding, and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons.

In Deputy Chief Controller of Imports & Exports Vs. Roshan Lal Agarwal & ors. (supra), the Hon'ble Supreme Court held that in determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for support the conviction can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons.

In U.P. Pollution Control Board Vs. Mohan Meaking Ltd. & ors. (supra), the Hon'ble Supreme Court held that during the stage of issuing process what has to be looked is whether there are allegations in the complaint by which the Managers or Directors of the Company can also be proceeded against, when the Company is alleged to be guilty of the offence. It was further held that for issuing the process, there is no legal requirement for the trial Court to pass a detailed order. It was also held that a lapse of a long period cannot be a reason to absolve the accused from the trial. In that case, the lapse of time was 17 years.

Keeping in view the decisions of the Hon'ble Supreme Court, in my view, it cannot be said that the trial Court has not looked into the papers of final report submitted by the police.

What is required is that the Magistrate is required to scrutinize the final report and apply its mind to take a decision either to accept or reject the same. By a well-reasoned and elaborate order, the trial Magistrate declined to accept the negative final report and on the basis of the statement of the complainant/non-petitioner No.2 recorded by the police under Section 161 of the Code, as also the statement of the complainant/non-petitioner No.2 and her witnesses recorded by the trial Magistrate under Sections 200 and 202 of the Code, the trial Court came to the conclusion that there is ground to proceed against the petitioners for the offences noticed above. In my view, the decisions relied on by the learned counsel for the petitioners are of no help to the petitioners as they turn on their own facts.

Keeping in view the decisions of the Hon'ble Supreme Court in Jagdish Ram Vs. State of Rajasthan & Anr. (supra); and Deputy Chief Controller of Imports & Exports Vs. Roshan Lal Agarwal & ors. (supra), I am of the view that the trial Court was justified in taking cognizance of the offences and issuing process against the petitioners. It cannot be said that the impugned order would result in serious miscarriage of justice or abuse of process of the Court warranting interference in the inherent jurisdiction. It is settled law that the powers under Section 482 of the Code are to be exercised sparingly and in exceptional cases where it appears that the order under challenge is patently

erroneous or would result in manifest injustice. The case in hand is not of that nature.

In this view of the matter, I do not find any merit in the criminal miscellaneous petition and it is, therefore, dismissed. The stay petition also stands dismissed. Record of the trial Court be returned forthwith.

(H.R. PANWAR), J.

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